THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO.9284 OF 1997

DATE: 02nd November 2006

Between:
Kothari Industrial Corporation Ltd.,
Unit Adoni Spinning & Weaving Co.,
Rep. by its Manager K.Rajagopalan.

...Petitioner.

And

Secretary and Assessing Officer,
Agricultural Market Committee,
Adoni, Kurnool District.

...Respondent.

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ORDER:

This writ petition is filed seeking a writ of Mandamus declaring proceedings of the respondent in Roc.No.604/96, dated 27.12.1996, demanding an amount of Rs.2,86,215/- as market fee for the year 1991-92, as arbitrary and illegal.

2. Under the impugned proceedings final assessment order was passed by the Assessing Authority purported to be under Section 12(1) of the A.P. (Agricultural Produce and Live Stock) Markets Act, 1966 (for short 'the Act'). Whereas the learned counsel for the petitioner states that though the assessment order was passed purported to be under Section 12(1) of the Act, it is in fact passed as per the power vested in the Assessing Authority under Section 12-B of the Act. Under Section 12(1) there is no

assessment made. Fee is levied against each sale and purchase of the produce within the notified area of the market. Whereas, this is an assessment made under Section 12-B and not under Section 12(1) of the Act. Under Section 12-B of the Act assessment shall be made within three years from the expiry of the year to which the assessment relates to. The Section 12(1) and 12-B reads as under:

Section 12. Levy of fees by the market committee:-

(1) The market committee shall levy fees on any notified agricultural produce, livestock or products of livestock purchased or sold in the notified market area *(at such rate, not exceeding *(two rupees) as may be specified in the bye-laws) for every hundred rupees of the aggregate amount for which the notified agricultural produce, livestock or products of livestock is purchased or sold, whether for cash or deferred payment or other valuable consideration.

Explanation I:- For the purposes of this section, all notified agricultural produce, livestock or products of livestock taken out of a notified market area shall, unless the contrary is proved, be presumed to have been purchased or sold within such area.

Explanation II:- In the determination of the amount of fees payable under this Act, fractions of ten paise equal to or exceeding five paise shall be counted as ten paise and other fractions of ten paise shall be disregarded.

Section 12-B. Assessment of market fees:-

(1) If the assessing authority is satisfied that any return submitted under Section 12-A is correct and complete, it

shall assess the amount of market fees payable by the trader on the basis thereof; but if the return appears to it to be incorrect or incomplete, it shall, after giving the trader an opportunity of providing the correctness and completeness of the returns submitted by him and after making such inquiry as it considers necessary, assess to the best of its judgment the amount of market fees due from the trader. An assessment under this section shall however, be made only within a period of three years from the expiry of the year to which the assessment relates.

(1) Where the return submitted by a trader includes the turnover or any of the particulars thereof which would not have been disclosed but for an inspection of accounts, registers or other documents of the trader made by an officer authorized under this Act before the submission of such returns, the assessing authority may, after giving an opportunity to the trader for making a representation in this behalf treat such return to be an incorrect or incomplete return within the meaning of sub-section (1) and proceed to take action on that basis.

(2) While making an assessment to the best of judgment under sub-section (1) the assessing authority may also direct the trader to pay, in addition to the market fees assessed a penalty equal to two times the market fees due on the turnover that was not disclosed by the trader in his return.

(3) Where any trader liable to pay market fees under this Act,---

(i) fails to submit return before the date specified in that behalf; or

(ii) produce the accounts, registers and other documents after inspection; or

(iii) submits a return subsequent to the date of inspection;

the assessing authority may, at any time within a period of three years from the expiry of the year to which the assessment relates, after issuing a notice to the trader, and after making such inquiry as it considers necessary, assess to the best of its judgment, the amount, of market fees due from the trader, on his turnover for that year and may direct him to pay in addition to the market fees so assessed, a penalty equal to two times the market fees due.

(4) Where, for any reason, the whole or any part of the turnover of the trader has escaped assessment to market fees or has been under-assessed or assessed at a rate lower than the correct rate, the assessing authority may, at any time within a period of three years from the date on which any order of assessment was served on the trader,---

(a) determine to the best of its judgment the turnover that has escaped assessment and assess the turnover so determined;

(b) assess the correct amount of market fees payable on the turnover that has been under assessed;

(c) assess at the correct rate the turnover that has been assessed at a lower rate, after issuing a notice to the trader and after making such inquiry as it considers necessary. The assessing authority, in additional to the market fee as assessed, also direct the trader to pay a penalty equal to two times the market fees.

3. Admittedly, in the instant case, assessment was made for the year 1991-92 in the year 1996. This itself shows that the assessment was made after more than three years. Therefore, the

action of the respondent under Section 12-B of the Act is barred by limitation.

4. In view of the above, there is no necessity of going into other details and on this ground alone the impugned order is liable to be set aside and accordingly set aside.

5. The writ petition is accordingly allowed. No costs.

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C.V.RAMULU, J.

Date: 02nd November 2006.
BSB